

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 05-0546V

Filed: 19 November 2008

* * * * *

ALEX and HEATHER SHORT, on behalf *
of their minor son, JAYDON SHORT, *

Petitioners, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

* * * * *

David C. Richards, Esq., Christensen & Jensen, P.C., Salt Lake City, Utah, for Petitioner;
Linda Sara Renzi, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION ON PROFFER AND ACCEPTANCE¹

On 13 May 2005, Petitioner brought a petition under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”).² On 2 September 2005, Respondent “assert[ed] that petitioners’ claim is compensable...and recommend[ed] that further proceedings...determine the type and amount of compensation that should be awarded in this case.” Respondent’s Rule 4(b) Report at 1. On 22 October 2008, Respondent filed a proffer to compensate Petitioner for all injuries compensable by the Vaccine Program and on 18 November 2008, Petitioner filed an Acceptance of

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

² The statutory provisions governing the Vaccine Act are found in 42 U.S.C. §§300aa-10 *et seq.* (West 1991 & Supp. 1997). Hereinafter, reference will be to the relevant subsection of 42 U.S.C.A. §300aa.

the Proffer, accepting the amounts contemplated in the Proffer.

The Proffer contemplates lost future earnings (set forth in detail at Tab C, attached), actual and projected pain and suffering damages in the amount of \$136,389.00 and past unreimbursable expenses of \$8,602.22. There was no medicaid lien relevant in this case. Respondent's proffer of future life care items is summarized in **Appendix Tab A: "Summary of Life Care Items,"** attached hereto. Petitioner accepts the proffered amounts as the total amount attributable to the vaccine-related injury conceded to be entitled to compensation.

Wherefore, by the proffer and acceptance of the parties, and for good cause shown, the Court awards the following compensation for the vaccine-related injury(ies) sustained by Jaydon Short, as represented by Alex and Heather Short, Petitioners:

- A. A lump sum payment of **\$167,609.00**, representing compensation for pain and suffering (\$136,389.00), and life care expenses for Year One and portions of Years Two and Three (\$31,220.00) in the form of a check payable to Petitioners as guardians of the Estate of Jaydon Short;
- B. A lump sum payment of **\$8,602.22**, representing compensation for past unreimbursable expenses, in the form of a check payable to Petitioners, Alex and Heather Short;
- C. An **amount sufficient** to purchase an annuity contract, subject to the conditions described in paragraph II. C. of Respondent's Proffer (incorporated herein by reference), paid to the life insurance company from which the annuity will be purchased, for items contained in the life care plan set forth in **Appendix Tab B, "Settlement Funding Portfolio,"** attached hereto.
- D. An **amount sufficient** to purchase an annuity contract, subject to the conditions described in paragraph II. D. of Respondent's Proffer (incorporated herein by reference), paid to the life insurance company from which the annuity will be purchased, that will provide payments for lost wages as set forth in **Appendix Tab C, "Calculation of Future Lost Wages,"** attached hereto.

The Court accepts these terms as just and reasonable. In the absence of a motion for review filed pursuant to Vaccine Rules 23 and 24, the Clerk is directed to enter judgment in accord with this Decision.³

³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review of this decision by a Court of Federal Claims judge. Then, under Vaccine Rule 12(a), Petitioner may expedite payment by filing an election to accept the judgment.

The parties are encouraged at this time to discuss attorney fees and costs incurred by Petitioner, so that Petitioner may expeditiously file an application for compensation of attorney fees and costs in a timely fashion, not later than 180 days after the entry of judgment on this Decision. Any further issues or queries should be directed to my law clerk, Isaiah Kalinowski, Esq., at (202) 357-6351.

IT IS SO ORDERED.

Richard B. Abell
Special Master